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Law is seldom static. It broadens from precedent to precedent. The increasing complexities of modern life throw up from time to time new problems for solution. The setting up of a new pattern of social life, the change-over from an agricultural economy to one partly agricultural and partly industrial, the secularisation of the Hindu personal laws, and the increased tempo of modern life and similar factors have been responsible not merely for a large volume of legislation but also for various matters being brought up for judicial elucidation. During the year under review about 27 decisions of the Supreme Court as well as a large number of decisions of the High Court have been reported in the columns of this journal. A brief reference to the more important of such decisions is here attempted.

Bar in Relation to the Courts.—In *Lalit Mohan Das* v. *Advocate-General Orissa*[1], the Supreme Court point out that while a member of the Bar undoubtedly owes a duty to his client and must place before the Court all that can be fairly and reasonably submitted on behalf of his client, he is, at the same time, an officer of the Court owing a duty to the Court in which he is appearing to uphold its dignity and decorum and not to do anything to bring the Court into disrepute, and that where he imputes partiality and unfairness against the judicial officer in open Court by suggesting that he followed no principle in his order he is scandalising the Court, and such conduct was not a matter between an individual member of the Bar and a member of the judiciary but brought into disrepute the whole administration of justice. *Associated Tubewells Ltd* v. *Gurjarmal Modi*[2], holds that it is not consistent with the dignity of the Court and the decorum of the Bar that any course should be permitted which may lead to a controversy as to what a Judge stated in Court and what view he held, and that in an application for review of an order dismissing a petition for special leave it is improper to assume and assert as to what the Judge's view was in making a particular order when the order pronounced did not set it out. In *K. K. Swami In re*[3] it is observed that Courts and Judges could not be expected to be fully conversant with the intricacies of criminal procedure and have a right to expect assistance from counsel, and in a state prosecution such assistance must come from the state prosecutor in charge, and it is for him to bring to the notice of the Court the proper procedure to be followed.

Private International Law.—In *Sivaramakrishna Iyer* v. *Kanukkarathiyute*[4], it is held to be a well-settled principle of international law that no Court has jurisdiction in respect of immovable property situated in a foreign territory and no decree can be passed charging foreign immovable property or recognising a mortgage over such property and passing a decree, that where an action in *personam* and the obedience

1. (1957) 1 M.L.J. (S.C.) 78
2. (1957) 2 M.L.J. (S.C.) 137.
3. (1957) 1 M.L.J. 19.
4. (1957) 1 M.L.J. 14.

of the decree can be compelled by the Court personally against the judgment-debtor by directing him to collect and deposit into Court the rents and profits the jurisdiction of the Court could extend to such cases despite the property being in foreign territory, but there can be no decree creating a right or interest over immovable property situate in foreign territory so as to enable the decree-holder to proceed against such properties in execution.

CONSTITUTIONAL LAW.—The decision of the Supreme Court in *Fernandez* v. *State of Kerala*[1], reaffirms the principle that in construing fiscal statutes and in determining the liability of a subject to tax, regard must be had to the strict letter of the law and not merely to the spirit of the statute or the substance of the law. In *A. S. Krishna* v. *State of Madras*[2], it is held that when a law is impugned as *ultra vires* the legislature that enacted it, what has to be ascertained is the true character of the legislation as an organic whole and not as a mere collection of sections that could be disintegrated and examined, and that if the legislation is in substance one on a matter assigned to the legislature it must be held valid in its entirety even though it might incidentally touch on matters which are beyond its competence. The Supreme Court further holds that the presumptions in section 4 (2) of the Madras Prohibition Act are presumptions which are to be raised not generally in all criminal trials but only in the trial of offences under section 4(1) of the Act, that they are purely ancillary to the exercise of legislative power in respect of Entry 31 in List II of the Government of India Act, 1935, and that the question of repugnancy with the Evidence Act and the Criminal Procedure Code does not arise In *Chamarbaugwalla* v. *Union of India*[3], the Supreme Court makes it clear that gambling as an activity cannot be described as a trade or business which has been guaranteed freedom in the Constitution, that it is outside the protection of Article 19 (1) (*g*), and there could be no question of the violation of any fundamental right by reason of the enactment of the Prize Competitions Act XLII of 1955. Likewise in *State of Bombay* v. *Chamarbawgwalla*[4], the Supreme Court holds that to control and restrict betting and gambling is not to interfere with trade, commerce, or intercourse as such but to keep them free and unpolluted and save them from unsocial activities, that the Bombay Lotteries and Prize Competitions Control and Tax Act XLV of 1948 as amended by Act XXX of 1952 was in pith and substance an Act with respect to betting and gambling, that the validity of the Act was not to be decided by the yardstick of reasonableness and public interest laid down in Article 19(6) and section 304 of the Constitution, and that no appeal can lie to a Court of law against the stringency and harshness, if any, of the law. *Guruvaiah Naidu* v. *State of Madras*[5], decides that 'public interest' contemplated by Article 19(6) in order to justify restrictions on the rights guaranteed by Article 19(1) (*g*) need not arise from the inherent nature of a particular trade, that since taxation is the supreme function of the state the law imposing a tax on sale is valid, that a system of licensing or regulation of trade with a view to enforce and administer the tax law efficiently is in the interests of the public within the meaning of Article 19(6), and that the licensing provisions under the Madras General Sales Tax Act (IX of 1939) relating to dealers in certain specified commodities like bullion, hides and skins, tobacco *etc* do not amount to unreasonable restriction on the freedom of trade guaranteed by Article 19 (1) (*g*) of the Constitution. In *Garikapati Veerayya* v. *Subbaiah Chowdhry*[6], the Supreme Court points out that where a suit had been instituted before the date of the Constitution the parties thereto had a vested right of appeal from the date of such institution upon terms and conditions then in force, that if the judgment sought to be appealed from was a judgment of reversal and the value of the subject-matter was above Rs. 10,000 the applicant for leave to appeal had a vested right of appeal to the Federal Court under the provisions of the Civil Procedure Code read with the Government of India Act, 1935 and the Federal Court Enlarge-

To be continued.

1. (1957) 1 M.L.J. (S.C.) 29.
2. (1957) 1 M.L.J. (S.C.) 59.
3. (1957) 2 M.L.J. (S.C.) 76.
4. (1957) 2 M.L.J. (S.C.) 87.
5. (1957) 2 M.L.J. 469.
6. (1957) 2 M.L.J. (S.C.) 1.

ment of Jurisdiction) Act, 1947, that such a right of appeal was a matter which would not fall within Article 133 of the Constitution, and that the jurisdiction and powers with respect to such an appeal being exercisable by the Federal Court immediately before the commencement of the Constitution, the applicant will have a right of appeal under Article 133 and was entitled to leave to appeal as of right. *Dhanalakshmi Ammal* v. *Income-tax Officer, Madras*[1] decides that an order by a High Court under Article 226 in a matter involving civil rights of parties will be an order in a civil proceeding within the meaning of Article 133. In *Associated Tubewells, Ltd.* v. *Gujarmal Modi*[2], the Supreme Court makes it clear that it is not the practice of that Court to give reasons for the dismissal of an application for special leave. The decision in *Clerks and Depot Cashiers of the Calcutta Tramway, Co.* v. *State of West Bengal*[3] lays down that the Supreme Court will interfere to set right decisions arrived at by Tribunals on questions of fact, only where the Tribunal has acted in excess of its jurisdiction, or where there is an apparent error on the face of the decision, or where the Tribunal has erroneously applied well-accepted principles of jurisprudence. *Abdul Majid* v. *State of Madras*[4] holds that apart from questions of guaranteed rights a person would be entitled under Article 226 to invoke the jurisdiction of the Court *ex debito justitiae* if he establishes that the order complained of was passed by an authority which had no jurisdiction at all and that in cases involving questions as to issuing of licenses a statutory right to object to the grant of license may not be the exclusive test to apply in deciding whether the applicant for the issue of a writ 'is an aggrieved person' or not. *C. D. Venkataraman*, In re[5], points out that the existence of an alternative remedy does not bar the jurisdiction of the High Court under Article 226, that it is merely a matter to be taken into account in the exercise of its discretion to issue the writ or not, and that at the preliminary stage the Court would consider not the mere existence of the remedy, but its reality, adequacy and effectiveness. *State of Madras* v. *Kassimia Charities*[6] decides that Article 226 cannot be invoked to convert a petition under it into a regular suit so as to determine questions of fact on a consideration of documentary evidence as in an original suit. In *Ganapathi Nadar* v. *State of Madras*[7], it is held that under Article 226 one petition by several persons aggrieved by a common order of reference for adjudication by the Tribunal under the Industrial Disputes Act is not permissible and that each aggrieved person must file a separate petition. *Raja of Ramnad* v. *State of Madras*[8] points out that a single petition under Article 226 by a trustee for relief in respect of several notifications under the Madras Estates Land Act and the Madras Estates Rent Reduction Act as regards the several institutions under his management could not be filed and that separate petitions will have to be filed regarding the properties comprised in each trust. *Paramount Films of India, Ltd. Madras Branch*, In re[9], makes it clear that an order of reference made by Government under section 10 (1) (*c*) of the Industrial Disputes Act is only administrative in its scope and therefore outside the purview of correction by a writ of *certiorari*, but the validity of the decision as to jurisdiction as a preliminary issue by the Industrial Tribunal may be challenged by an application for issue of *certiorari*. In *Sambandan* v. *Regional Traffic Superintendent, Southern Railway*[10], it is pointed out that whether an order affecting a civil servant's seniority in service is regarded as an administrative order outside the purview of correction by *certiorari* or as a quasi-judicial determination of the right of the civil servant it is not one where jurisdiction under Article 226 can be invoked, and no writ of *mandamus* can issue either because the only duty of the Executive is to a employ the civil servant at its pleasure and the Court cannot compel it to signify its pleasure only in accordance with the rules framed by it to regulate the seniority of civil servants of the concerned class. *Arunachalam Chettiar Firm* v. *Kaleeswarar Mills*[11] lays down that no writ of *mandamus*

1. (1957) 2 M.L.J. 567.
2. (1957) 2 M.L.J. (S.C.) 137.
3. (1957) 1 M.L.J. (S.C.) 23.
4. (1957) 2 M.L.J. 1.
5. (1957) 1 M.L.J. 26.
6. (1957) 1 M.L.J. 185.
7. (1957) 2 M.L.J. 54.
8. (1957) 2 M.L.J. 145.
9. (1957) 2 M.L.J. 357.
10. (1957) 2 M.L.J. 541.
11. (1957) 1 M.L.J. 254.

can issue the object of which is to declare the rights of parties, that a writ can issue only on principles analogous to those formulated in section 45 of the Specific Relief Act, that the writ is granted only to compel performance of duties of a public character, and that the Court will as a general rule refuse a writ of *mandamus* when there is an alternative specific remedy at law which is not less convenient, beneficial and effective. *Kaleswari Handloom Factory* v. *State of Madras*[1] holds that a writ of prohibition will generally issue to confine subordinate Tribunals or authorities within the limits of their powers, that application for the writ should be made as soon as the Tribunal has taken any step in any proceedings in which it has no jurisdiction to try, and that where a Tribunal has jurisdiction to try a particular issue and all factual questions which establish that jurisdiction the mere fact that such facts are denied by one side or the other does not mean that the High Court alone has exclusive jurisdiction to decide the question in proceedings under Article 226. *Rangaswami Raja*, In re[2], decides that Article 227 is confined to subordinate Courts, that a Judge of the High Court as such is not subordinate to the High Court, and that a civil revision petition against the order of the Judge of the High Court on the original side is not competent under the article. *Visalakshi Amma* v. *Anjaneyalu Chetty*[3] states that the High Court's jurisdiction under Article 227 is a limited one, that the principles applicable in deciding whether a writ of *certiorari* could issue under Article 226 will equally apply to cases of revision under Article 227, and a mere erroneous decision with nothing more is not enough to attract the jurisdiction under the article, so much so, the fact that the Master came to an erroneous conclusion on a wrong construction of the decree will itself be no ground for interference under Article 227. *Srinivasan* v. *President, District Board, Coimbatore*[4] points out that the protection afforded by Article 311(2) can be invoked only by the persons referred to in Article 311(1), and, therefore, where the petitioner was not a member of the civil service of the Union or of the State but was only an employee of the District Board the article cannot apply. In *T. M. R. Abdul Khader*, In re[5], it is held that a mere suspension order does not involve necessarily a reduction in rank, and, so, the mere suspension of a civil servant for a specified period from service would not fall under Article 311 (2).

INDUSTRIAL DISPUTES ACT.—In *Kaleswar Handloom Factory* v. *State of Madras*[1], it is laid down that an Industrial Tribunal established under the Industrial Disputes Act, 1947, has jurisdiction to decide whether what has been referred to it for adjudication is an industrial dispute or not within the meaning of the Act. *Kesava Reddiar* v. *Labour Appellate Tribunal*[6] decides that a 'workman' within the meaning of section 2 (*i*) is one who is employed by the employer, carrying the relationship of master and servant with the master having control over the latter; hence, there can be no question of industrial dispute unless the person employed is a 'workman' within the meaning of the Act. *Modern Match Industries* v. *Labour Appellate Tribunal*[7] states that the place of work may not decide the issue whether the relationship of master and servant exists, and the real question is whether the employer exercised control over the worker and whether the time of the worker was at the disposal of the employer. It also holds that it cannot be said that the Industrial Tribunal has no jurisdiction to award an enhancement of wages merely because the wages paid before the dispute were admittedly the highest paid by the employer in the industry concerned where it is found that payment at the old rates came nowhere near what had been accepted as the minimum living wage in such industry. It is further held that though the functions of the Industrial Tribunal are quasi-judicial it is not a Court and cannot be denied jurisdiction to take into account the factor that a certain amount is normally accepted as the minimum living wage for a workman. *Pudukottah Textiles, Ltd.* v. *Subramaniam*[8] points out that where the workers

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1. (1957) 2 M.L.J. 589.
2. (1957) 1 M.L.J. 364.
3. (1957) 2 M.L.J. 387.
4. (1957) 2 M.L.J. 406.
5. (1957) 1 M.L.J. 55.
6. (1957) 2 M.L.J. 139.
7. (1957) 2 M.L.J. 135.
8. (1957) 2 M.L.J. 438.

of an employer are collectively made parties to an industrial dispute, all those in the service of the employer on the date of the order of reference under section 10(1) (*c*) will be parties to the dispute, and the Tribunal has jurisdiction to award compensation for the period for which a workman was unjustly kept out of employment. In *Punjab National Bank* v. *Sri Ram Kunwar*[1], the Supreme Court holds that the expression 'costs of proceeding' in section 11(7) means costs of the entire proceeding as determined on its conclusion and not costs in a pending proceeding nor costs to be incurred in future by a party, that 'costs incidental to any proceeding' means costs of interlocutory applcations, etc., as determined at the conclusion of the hearing, that neither expression has reference to costs payable in advance or to halting and travelling allowance payable to a party, and that it will be a negation of justice and reason to direct a party to pay in advance the costs of the other irrespective of the final result of the proceedings. *Arunachalam Pillai* v. *Industrial Tribunal*[2] lays down that the purchaser of an asset belonging to an employer cannot be deemed to be a successor to the business of the employer within the meaning of section 18 (*c*). In *Management of Ambi's Cafe* v. *Thangavelu*[3], it is made clear that the suspension of an employee by the management pending an application for enquiry under section 22 is not a contravention of that section, that suspension does not am unt to termination of service, and that the order of the Tribunal passed on the employee's application directing his reinstatement and payment of compensation to him is without jurisdiction. *Bombay Prakash Bhavan* v. *Narayanan*[4] decides that suspension of a workman pending inquiry into his conduct or pending an application to the Tribunal under section 22 for permission to terminate his services would not amount to a punishment within the meaning of the section so as to attract the provisions of sect on 23 of the Industrial Disputes (Appellate Tribunal) Act. In *Kohinoor Saw Mills, Co* v. *State of Madras*[5], it is held that the exemptions under section 25-A (1) (*a*) and (*b*) of the Act as amended in 1953 are statutory exemptions, that it is not for Government or any other agency to grant exemptions, that the only jurisdiction conferred on Government in section 25-A (2) is to decide if the 'question' refe red to in the section arises, and, that ' question ' within the meaning of the section connotes something in the nature of a *lis* and need not necessarily be an industrial dispute. *C. R. R. Ratnam & Co* v. *Ekambaram*[6] points out that under section 25-A as amended in 1953 the right of the Government to order recovery springs into existence enabling Government to step in only on there being an ascertained or predetermined liability which the employer has not discharged by payment, that the Government has not however the power to ascertain whether the workman is a retrenched workman, or consider the question of compensation, in case of dispute as to these matters, and that there is no machinery provided in the Act for the adjudication of these matters in the event of dispute.

INDUSTRIAL DISPUTES (APPELLATE TRIBUNAL) ACT.—In *Mysore City Hotels Association* v. *Labour Appellate Tribunal*[7], it is held that the mere fact that a claim is belated will not oust the jurisdiction of the Appellate Tribunal, but it is a well-settled principle that a belated claim for bonus should not be investigated. *Newtons Studios* v. *Ethirajulu*[8] decides that it is only a contravention of section 22 of the Act XLVIII of 1950 that gives the workmen affected a right to apply under section 23 of the Act, that for the bar of section 32 to apply the workmen whose services have been terminated must be workmen concerned in the appeal before the Appellate Tribunal, that where both the workers and the management were parties to the industrial dispute, the dispute being a collective dispute, all the workmen will be workmen concerned in the appeal within the meaning of section 22 and interested in the principles that should govern the right of the management to effect retrenchment and the conditions subject to which that right would be exercised. *Pudukottah Textiles, Ltd.* v. *Subramaniam*[9] states that though neither a right to reinstatement nor a right to

1. (1957) 1 M.L.J. (S.C.). 53.
2. (1957) 2 M.L.J. 283.
3. (1957) 2 M.L.J. 393.
4. (1957) 2 M.L.J. 619.
5. (1957) 2 M.L.J. 87.
6. (1957) 1 M.L.J. 175.
7. (1957) 1 M.L.J. 11.
8. (1957) 2 M.L.J. 147.
9. (1957) 2 M.L.J. 438.

payment of wages when an employee is out of employment is a common law right nor a right in contract, such relief could be granted by the Appellate Tribunal under section 23 where the workmen have been discharged in contravention of section 22. *Arya Bhavan, Madras* v. *Seetharaman*[1] holds that to invoke section 23 it must be established that the contravention of section 22 was during the pendency of proceedings before the Appellate Tribunal and hence a workman dismissed after the award by Industrial Tribunal and before the filing of an appeal by the employer cannot invoke section 23. *Bombay Prakash Bhavan* v. *Narayanan*[2] lays down that the suspension of a workman pending an enquiry into his conduct or pending an application to the Industrial Tribunal will not amount to a violation of section 22 and cannot attract the provisions of section 23.

CONTRACTS.—In *Maniam Hiria Gowder* v. *Naga Maistry*[3], it is made clear that an agreement of partnership which will entail a transfer of a license or permit granted by the Government, when there is an express prohibition of such transfer is illegal and void under section 23 of the Contract Act, that where a penalty is imposed for the contravention of law it is an indication that the transaction involving such a contravention is prohibited and therefore illegal, that where there is no penalty imposed the question whether the contract is illegal or not has to be determined on a consideration of the purpose of the legislation, whether the prohibition is purely a measure for the protection of the revenue or intended to be in the interests of the public, and that in the latter case the contract will be void. *Sakkarama Rao* v. *Nagasami Rao*[4] states that discharge of a mortgage by allowing the mortgaged property to be in the possession of a co-mortgagee would amount to payment to a joint promisee within the meaning of of section 45. *Rangaswami Reddi* v. *Doraswami Reddi*[5] holds that a plaintiff who has been guilty of a material alteration of the promissory note sued on cannot enforce the note or fall back on the original consideration, nor can he invoke the provisions of section 65 to sustain his claim. *Narayanaswami Chetty* v. *Soundararajan & Co., Ltd.*[6] points out that where there is no term in the contract that either the buyer or the seller should procure a license for clearing the goods contracted for, the relevant factors to be considered to decide on whom the obligation lay are the place at which the contract was made, the situation of the parties and the place where the goods were when the contract was made. It further points out that it is the duty of the seller on c.i.f. terms to tender the documents within a reasonable time after shipment to the buyer and normally it is the duty of the buyer to pay the price on such tender, and the duty of the buyer to pay before the arrival of the goods cannot be construed as a stipulation that the payment would be made before the tender of the documents. *Sundararama Iyer & Co.* v. *Murugesa Mudaliar*[7] lays down that where the contract stipulated that on the failure of the buyer to take delivery as required by the seller's notice the seller shall have the right to sell such goods, such term should be construed as an express contract mentioned in section 35 of the Sale of Goods Act and it is the duty of the seller to intimate to the buyer that the goods are ready for delivery and ask him to tender the price and take delivery of the goods, and in the absence of such notice by the seller he is not entitled to any damages and the buyer can ask for refund of his advance.

COMPANY LAW.—In *Dalichand* v. *Madras Kirana Merchants Association*[8], it is pointed out that an association without share capital and not for profit which has been given a corporate life by reason of a license granted under section 26 of the Companies Act, 1913, is a 'company' within the meaning of section 2 (2) and an application under section 38 for rectification of the rigister of members is competent. *Bank of Hindustan* v. *Suryanarayana Rao*[9] holds that, under section 34, a company has no authority or power to consider registration of a transfer in the absence of a duly stamped transfer deed signed by both transferor and transferee except in certain

1. (1957) 2 M.L.J. 557.
2. (1957) 2 M.L.J. 619.
3. (1957) 2 M.L.J. 264.
4. (1957) 1 M.L.J. 3.
5. (1957) 2 M.L.J. 196.
6. (1957) 2 M.L.J. 328.
7. (1957) 1 M.L.J. 221.
8. (1957) 2 M.L.J. 416.
9. (1957) 2 M.L.J. 517.

extraordinary circumstances, that the company's discretion extends only to the matter of registering the transfers and not to decide on their validity, that a petition for rectification of the register will lie normally after the filing of a winding up petition and before the winding up order is passed, provided that the Court will normally reject that petition if the company is already in a notorious state of bankruptcy by the time the petition for rectification was filed, and that under section 38 though a petition is the normal way of moving the Court for rectification of the register a suit also can be filed under the section either alternatively or in addition. *Kuttalingam Pillai* v. *Chinnakannu Pillai*[1] states that where on an official liquidator's application in the winding up of a company to call upon a shareholder to pay up the company's moneys in his hands an order is passed for payment allowing interest at a rate lower than what had been agreed upon by that shareholder, such an order can be appealed against only by the official liquidator and not by another shareholder though he has got the leave of the High Court granted without notice to the respondent and by a Judge other than the company Judge. *Syed Haidar Sahib* v. *Jayaram Pillai*[2] makes it clear that paying a creditor of the company especially after the commencement of the winding up proceedings cannot be deemed to be a *bona fide* transaction carried out or arising in the ordinary course of current business, and a deed assigning an asset of the company after the starting of the winding-up proceedings is therefor void under section 227 (2) and unenforceable.

PROPERTY LAW.—In *Indian Insurance and Banking Corporation* v. *Paramasivam*[3], it is pointed out that the English rule as to fixtures does not in terms apply to India, that the matter has to be determined on the intention of the parties, that in certain circumstances machinery existing on the mortgaged premises on the date of the mortgage and even machinery subsequently installed thereon may pass under the mortgage, that the degree of annexation and the purpose for which they are brought on the premises, whether for the use of the building as such or for the use of the building for some specified purpose unconnected with the building as such will be the relevant factors for consideration, that where a building subject to a mortgage in which a particular business like a distillery or theatre, etc., is carried on is sold in execution of a mortgage decree what the purchaser will get will be the building and not the fixtures. *Swaminatha Udayar* v. *Mottaya Padayachi*[4] holds that under section 54 (3) of the Transfer of Property Act delivery of possession would convey title, and that where property usufructuarily mortgaged is sold by the mortgagor to the mortgagee in discharge of the mortgage a direction by the vendor to the vendee to keep the property as absolute owner amounts to delivery of possession. In *Kamala Devi* v. *Bachulal Gupta*[5], the Supreme Court points out that while it is true that a gift becomes legally effective only when a registered instrument is executed in the manner laid down in section 123 that section does not deal with nor does it affect the power of a Hindu widow to make an alienation of a reasonable portion of her husband's estate in favour of her daughter as marriage dowry.

MADRAS ESTATES LAND ACT: In *Tanjore Palace Devasthanam* v *Estates Abolition Tribunal*[6], it is held that if portions of land in a whole village are granted in inam, the lands so granted are not constituted into an estate within the meaning of section 3 (2) (*d*) of the Madras Estates Land Act, that if subsequent to the date of the creation of the minor inam the other areas in the village are the subject of a grant the latter constitutes the grant of a whole village and therefore an estate within the meaning of section 3 (2) (*d*), *Explanation* 1, but the later grant will not affect nor be effective to convert the anterior grant of land into an estate. *Chidambaram Chettiar* v. *Ramaswami Odayar*[7] decides that on the seizure of the private lands of the Raja of Tanjore and subsequent regrant by the East India Company seven years later in 1862 of the suit lands, whatever might have been the character of the lands prior to the seizure all the previous tenures must be deemed to have been wiped out, and the re-grant must be deemed to be a fresh source of title, and admissions by the tenant in

1. (1957) 2 M.L.J. 506.
2. (1957) 1 M.L.J. 141.
3. (1957) 2 M.L.J. 256.
4. (1957) 1 M.L.J. 17.
5. (1957) 1 M.L.J. (S.C.) 66.
6. (1957) 2 M.L.J. 67.
7. (1957) 1 M.L.J. 72.

leases and muchilikas executed by them should not be held to bind them where those documents themselves showed that the lands were in the continuous occupation of the defendants as tenants paying only the customary rents, and that the grant was of the whole inam village in which the suit lands lay and was therefore an 'estate' within the meaning of section 3 (2) (*d*), *Explanation* 1.

MADRAS ESTATES ABOLITION AND CONVERSION INTO RYOTWARI ACT—In *Appaswami Naidu* v. *Appaswami Naidu*[1], it is held that where under a partition arrangement zamin pannai lands were allotted subject to the liability of paying rent in perpetuity to the zaminder, the persons in possession of such lands will not be 'landholders' within the meaning of section 3 (5) of the Estates Land Act and will not be entitled to the compensation deposited under Madras Act XXVI of 1948 on the estate being taken over by Government. *Gopalaswami Ayyangar* v. *Athmanathaswami Devasthanam*[2] states that land wholly uncultivated before letting into possession cannot be said to be home-farm or private land at its inception, that any land which can be cultivated systematically will be 'cultivable land' within the meaning of the Estates Land Act and therefore ryoti till the contrary is proved. *Hariharamuthu Pillai* v. *Ramasubbalakshmi Nachiar*[3] points out that pre-settlement lands whether they were of both varams or of the melvaram only stood excluded from the estates settled on the zamindars at the time of the Permanent Settlement, and it may be taken that the income from the minor inams would not have been taken into account in arriving at the peshkush fixed for the zamindari, hence the minor inams cannot be estates under the Estates Land Act and would be outside the scope of the Madras Estates Abolition Act; also, since the Madras Act XXX of 1947 does not apply to such pre-settlement minor inams the tenants would not be entitled to the benefits of that Act by way of reduction of the rate of rent. *Ramanathan Chettiar* v. *State of Madras*[4] lays down that the onus will be on the party putting forward the case that the village is an estate, and that where there is no evidence the case must be decided on the onus of proof. *State of Madras* v. *Zakina Bivi*[5] decides that there during the currency of a lease the Government took possession of the land comprised in the lease by virtue of a notification under the Estates Abolition Act the lessee is not entitled to claim any damages from his lessor or out of the compensation amount belonging to his lessor as all leases are valid subject to the proviso mentioned in section 20 of the Act. *Venkatasubbaraya* v. *State of Madras*[6] points out that the meaning of the expression 'rent' in section 23 is rent for the use of the land held for the purposes of agriculture, and if by reason of contract between the landholder and the pattadar the latter is entitled to deduct from the amount other sums having no relationship to the use of the land for agricultural purposes the deduction cannot be claimed as against the Government. *Madras Mercantile Agencies* v. *Bashyakarlu*[7] decides that section 42 of the Estates Abolition Act does not preclude the attachment in execution of a decree of the compensation amount deposited by the Government before the Tribunal after the taking over of the estate. *Chidambaram Chettiar* v. *Venkatesa Iyengar*[8] makes it clear that though section 42 is wide and does not expressly exclude consideration of fresh rights accruing after the date of notification of an estate, the general scheme of the Act draws a dividing line and fixes the notified date as the point of time when the rights which are the subject-matter of the proceedings before the Tribunal under the Act become crystallised. It is further stated that the secured creditor referred to in the section signifies only a creditor whose security extends over the estate when it was taken over and not one who obtained a charge over the compensation amount without having had any charge or encumbrance over the estate taken over. *Raja Rajeswari Ambal* v. *District Board, Tinnevelly*[9] takes the view that the claim for maintenance referred to in section 45 (2) (*b*), etc., refers only to the maintenance or support of natural persons and does not include amounts payable

1. (1957) 2 M.L.J. 119.
2. (1957) 1 M.L.J. 104.
3. (1957) 2 M.L.J. 599.
4. (1957) 1 M.L.J. 348.
5. (1957) 2 M.L.J. 260.
6. (1957) 2 M.L.J. 162.
7. (1957) 2 M.L.J. 27.
8. (1957) 2 M.L.J. 341.
9. (1957) 2 M.L.J. 73.

towards the maintenance of property and institutions and that institutions in whose favour a charge is created over an estate or its income will only rank as a creditor and be entitled to a proportionate share of the compensation amount. *Arunchalam Chettiar* v. *Narayanan Chettiar*[1] holds that disputes referred to in the opening language of section 56 (1) would not exclude disputes earlier in origin than the notified date, that the section must be read as covering all disputes factually present after the notified date, and that the disputes which are excluded are only those in regard to which there have been binding adjudications by the ordinary Courts before that date and matters pending before other authorities before the notified date. *Chidambaram Chettiar* v. *Muhammad Aliar Rowther*[2] lays down that since section 56 (1) (*c*) specifically entrusts the determination of the dispute as to who among the rival claimants was entitled to the grant of patta to the Settlement Officer, the decision of such dispute was excluded from the competence of other authorities and the Estate Manager has no power to decide the matter. *State of Madras* v. *Kasi Mohamed*[3] is of the view that it is doubtful if a notification by the Government under the Madras Estates Land (Reduction of Rent) Act can be held to be a proceeding in a civil Court within section 64-A of the Estates Abolition Act.

Madras Agriculturists Relief Act—In *Krishnamoorthy* v. *Devanadhaswami Devasthanam*[4], it is pointed out that renewal of a mortgage in favour of the Devasthanam by a mortgagor after becoming its trustee is a re-investment of the trust money, and the liability thereunder is one arising out of a breach of trust, and is therefore outside the provisions of Act IV of 1938. *Thangarasu Pillai* v. *Sivarama Iyer*[5] decides that a usufructuary mortgage is also a debt within the meaning of the Act liable to be scaled down under section 9-A, and though generally speaking the mortgagee's right is to retain possession till redemption the absence of personal liability of the mortgagor or of right to the mortgagee to sue for sale does not take away the applicability of section 19-A of the Act. *Konthalavalli Achi* v. *Ayyathurai Odayar*[6] points out that section 9-A (10) as amended is in the form of an exception to the main provision in the section, that the devolution by transfer *inter vivos* referred to in section 9-A (10) (ii) (*a*) cannot include transfers by operation of law as in Court sales, and hence a Court auction-purchaser is not entitled to the benefit of exemption under the provision, and the creation of a sub-mortgage by the mortgagee is not a transfer of the mortgagee's interest within the meaning of section 9-A (10) (ii) (*b*). *Jeeyappa Iyengar* v. *Srinivasan*[7] states that section 19-A would not apply to a case where the creditor himself declares that the mortgage has been completely wiped out by a subsequent agreement of sale and that there is no debt outstanding.

Hindu Law.—In *Palvanna Naidu* v. *Annamalai Ammal*[8] it is held that a father in an undivided Hindu Mitakshara family can within reasonable limits make a gift of joint family immovable property to his daughter on the occasion of her marriage and when she is departing from her parental home, that the obligation may even be fulfilled later, without point of time, not only by the father but also by his widow or son taking over the estate from the father, but that the father has no power to make a gift to his daught r by purporting to make a settlement for the fulfilment of an obligation not actually arisen or not possibly arising at all for fulfilment. *Canara Banking Corporation* v. *South Indian Bank*[9] is of the view that the rule that the father or manager has no power to impose upon a minor of the family the risk and liability of a new business started by him will not apply in the case of families whose hereditary avocation is trade and in any event the rule cannot apply where a sole-surviving coparcener starts a new business at a time when there are no minors. *Subramanian* v. *Kalyanasundaram Iyer*[10] lays down that property which a Hindu coparcener obtains at the time of partition is not his separate property within the meaning of section 3 (1) of the Hindu Women's Rights to Property Act, 1937, but

1. (1957) 1 M.L.J. 183.
2. (1957) 1 M.L.J. 244.
3. (1957) 1 M.L.J. 1.
4. (1957) 2 M.L.J. 411.
5. (1957) 2 M.L.J. 461.
6. (1957) 1 M.L.J. 112.
7. (1957) 2 M.L.J. 262.
8. (1957) 1 M.L.J. 238.
9. (1957) 2 M.L.J. 502.
10. (1957) 1 M.L.J. 250.

must be deemed to be an interest in joint family property by virtue of section 3 (2) of the Act in which his widow would have an interest. In *Ramalingam Pillai* v. *Ramalakshmi Ammal*[1], it is held that a widow who is entitled to the share of her husband in joint family property by virtue of section 3 (2) of Act XVIII of 1937 can question the alienation of any such property by the sole surviving male coparcener in a suit for partition, and that the mere fact that she has not obtained partition does not mean that her rights are at the mercy of the surviving coparceners of her husband. *Thangavelu Asari* v. *Lakshmi Ammal*[2] states that it is only where a widow is in enjoyment of rights and interests of a limited character that there will be forfeiture on her remarriage by reason of section 2 of the Hindu Widows Remarriage Act, but not where she has taken rights absolutely. In *Kamala Devi* v. *Bachulal Gupta*[3] the Supreme Court points out that the Hindu widow has power to alienate a reasonable portion of her husband's estate in favour of her daughter as marriage dowry sometime afte · the marriage to fulfil a promise made earlier as a religious act conducive to the spiritual benefit of her husband. *Deoki Nandan* v. *Murlidhar*[4] lays down that the test to decide whether a religious endowment is public or private is to see who the beneficiaries thereunder are, whether specific persons or the general public, and that when a temple is built, idol installed, and properties endowed the true beneficiaries are not the idols but the worshippers. n *Dasarathararni Reddi* v. *Subba Rao*[5] the Supreme Court states that where a dedication is complete a trust in favour of a public religious charity is created, that if the dedication is partial a charge in favour of the charity alone arises and stands attached to and follows the property which retains its original and secular character, and that whether or not a dedication is complete will be a question of fact to be determined in each case on its facts.

COURT-FEES ACT.—In *Rengachari* v. *Somasundaram Pillai*[6] it is pointed out that where the entire decree for redemption of a mortgage is sought to be set aside the proper Court-fee payable would be on the principal money expressed to be secured by the instrument of mortgage. *Ranganatham* v. *Jaffars*[7] states that Court-fees in the State are now collected on the strength of the Madras Court-Fees and Suits Valuation Act, 1955, that section 73 of that Act does not empower the Government to remit the fees payable by a particular individual in a particular case, that the Government in appropriate cases can remit the fees payable by a class of people, but the classification must be reasonable, based upon some real and just relation to the subject sought to be achieved, and that a notification issued by Government remitting fees and charges payable by the ex-workmen of the Madras Electric Tramways, Ltd., on plaints, applications, etc., for recovery of amount under award of the Industrial Tribunal is *ultra vires* the Government as such workmen cannot be described to be a class. *Sreeramulu* v. *Nagarathnamma*[8] decides that section 7 (iv) (*f*) of the Court-fees Act, 1870, as amended in Madras entitles a plaintiff appealing from a final decree in a suit for accounts to value his appeal notionally, but the Appellate Court has power to direct the plaintiff-appellant to state the amount involved in each objection taken by him; also section 7(iv) (*f*) specifically applies only to a plaintiff but does not extend the immunity to a defendant appealing. *Krishna Iyer* v. *Kailasanathar Koil Devasthanam*[9] holds that where a decree for mesne profits directs payment of a fixed sum per month and the appellate Court staying execution directed the deposit of the amount in Court allowing the decree-holder to withdraw the same no Court-fee will be payable ordinarily on the amounts withdrawn inasmuch as Court fee can be recovered only when a decree is executed. *North Arcot District Central Co-operative Stores, Ltd.* v. *Collector of North Arcot*[10] takes the view that where separate orders were placed by the Collector for the supply of goods to four districts without a parent contract forming a basis for a common cause

1. (1957) 2 M.L.J. 382.
2. (1957) 2 M.L.J. 132.
3. (1957) 1 M.L.J. (S.C.) 67.
4. (1957) 1 M.L.J. (S.C.) 28.
5. (1957) 2 M.L.J. (S.C.) 175.
6. (1957) 1 M.L.J. 60.
7. (1957) 1 M.L.J. 188.
8. (1957) 1 M.L.J. 33.
9. (1957) 1 M.L.J. 148.
10. (1957) 1 M.L.J. 58.

of action section 17 of the Court Fees Act would apply as there were four distinct subjects and four distinct causes of action.

LIMITATION ACT.—In *Viswanathan Chettiar In re*[1], it is pointed out that section 5 of the Limitation Act will apply to excuse delay in the presentation of an application for special leave to appeal from an order of acquittal and that section 29 (2) comes into operation only when the special law prescribes a period different from the period prescribed by the First Schedule to the Limitation Act which is not the case here. *Sarvottama Kamath* v. *Abdulla Beary*[2], lays down that where immovable property is transferred by way of usufructuary mortgage and the mortgagee subsequently transfers a portion of the property to another by way of a usufructuary mortgage not *qua* mortgagee but as owner under a sale-deed obtained subsequent to the earlier mortgage, a suit to recover possession of the portions so transferred by him would be governed by Article 134, and on the language of that article there is no scope for importing into it ideas of equity and fairplay. *Patteri Pakkar* v. *Chengatiyo Kombi Ammad*[3], states that a person who has been dispossessed and who sues for possession must not only establish his title but should also prove his possession within 12 years prior to the suit and the fact of the negativing of the defendant's case of being let into possession by a third party, a predecessor in title of the plaintiff, does not shift the onus to the defendant of proving adverse possession, and it is Article 142 and not Article 144 that applies to such a case. In *Kamakshi Ammal* v. *Arukkanni Ammal*[4], it is pointed out that Article 180 must be read not only with the provisions of Order 22, rule 92 (1) of the Civil Procedure Code but also with other material sections and orders of the Code, and it is only when proceedings started in the course of execution come to a final determination that it can be said that a Court sale has become absolute; hence, where the decree-holder filed a suit to set aside an order allowing a claim and the suit terminated in a compromise, an application by the decree-holder under Order 21, rule 95, Civil Procedure Code, made within three years from the disposal of the suit will be within time. *Subramaniam Chettiar* v. *Muthiah Pillai*[5], states that an application for a final decree by the plaintiff-mortgagor who has obtained a preliminary decree for redemption can be made only on payment or deposit of the amount fixed by the preliminary decree and limitation is three years from the date of the deposit under Article 181. *Kannappa Chettiar* v. *Manickam Chettiar*[6], decides that an application supported by a sworn affidavit though not in form a verified execution petition may still be taken to be such as to constitute a step-in-aid of execution within Article 182 (5) for calculating the period of limitation. *Veda Goundan* v. *Arunachalam Chettiar*[7], states that an application by an auction-purchaser to bring on record legal representatives of the judgment-debtor before confirmation of sale where the validity of the execution is not in dispute will not come within Article 182.

INSOLVENCY.—In *Basker and Co.* v. *Veerasikku Goundar*[8], it is held that under section 9 of the Provincial Insolvency Act a petition for the adjudication of the debtor as insolvent cannot be maintained by a creditor unless the debt alleged to be owing to him had come into existence prior to the date of the commission of the act of insolvency on which the petition is founded, and a claim for refund of advance paid under a contract will be a liquidated sum within the meaning of section 9 (1) (*b*) notwithstanding the fact that the cause of action is the same as that on which damages could be claimed for breach of contract. *Sri Lakshmi and Co.* v. *Swaminatha Iyer*[9], takes the view that where in execution of a decre for specific performance obtained against the debtor prior to the filing of an application for the adjudication of the debtor the Court as representing the debtor executed a mortgage in favour of the decree-holder after the filing of the insolvency petition, and later the debtor was adjudicated, the mortgage will not bind either the debtor's estate or the Official

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1. (1957) 1 M.L.J. 50.
2. (1957) 1 M.L.J. 170.
3. (1957) 2 M.L.J. 34.
4. (1957) 1 M.L.J. 180.
5. (1957) 1 M.L.J. 147.
6. (1957) 2 M.L.J. 105.
7. (1957) 2 M.L.J. 388.
8. (1957) 2 M.L.J. 582.
9. (1957) 2 M.L.J. 398.

Receiver inasmuch as under section 28 (7) the insolvency will relate back to the date of the petition and the execution of the mortgage by the Court is not by it as custodian of the insolvent's estate but as representing the debtor and therefore it would be like a mortgage executed by the debtor himself after adjudication. *Official Receiver of Salem* v. *Chinna Goundan*[1], holds that mere recital that consideration had been received when in fact it had not been received is not enough to show that no consideration was intended to pass and that the document was a bogus one executed gratuitously, and a careful scrutiny should be made of the circumstances to see whether the purchaser is a lucky purchaser or a fraudulent purchaser.

CIVIL PROCEDURE CODE.—In *Kokila* v. *Rajabather*[2], it is pointed out that the dismissal of a prior suit for partition by a person claiming to be the legitimate son of the last male-holder does not operate as *res judicata* so as to bar a subsequent suit by the same plaintiff for partition claiming as illegitimate son, that since the joining of such claim would have certainly led to confusion and embarrassment in the prior suit the ground of the claim in the second suit cannot be said to be a matter which ought to have been made a ground of attack in the former suit so as to attract the operation of *Explanation IV* to section 11, Civil Procedure Code; nor will the second suit for the same reason be barred by Order 2, rule 2. *Official Receiver of Salem* v. *Chinna Goundan*[3], is of the view that under section 34 interest on an unsecured debt at 12 per cent. per annum cannot be regarded as unreasonable. *Kunhiraman* v. *Madhavan Nair*[4], decides that an order for arrest passed by a Court of original jurisdiction in execution of a decree of a Small Cause Court which had been transferred to it for execution in its original side is not open to appeal under section 47 but only to revision under section 25, Provincial Small Cause Courts Act. *Govinda Padayachi* v. *Kannammal*[5], points out that although an order passed in execution dismissing a claim petition does not fall under section 47 and is not subject to appeal, when an appeal is actually preferred and disposed of by the lower Court, a second appeal on the order of the lower appellate Court is competent and has to be dealt with on the merits. *Srinivasa Sastri* v. *Venkatarama Ayyar*[6], holds that where the order of transmission of a decree for execution is passed after the expiry of 12 years from the date of the decree, an execution petition filed within 12 years in the transferee Court but before the order of transfer is made will not save the decree-holder from the bar of section 48. In *Munuswamy* v. *Viswanatha Nair*[7], it is held that the exemption from attachment under section 60 (*h*) covers only the case of labourers who earn their living by personal labour in occupations which require no skill or previous education; hence the bonus payable to a labourer if it does not form part of the wages is not exempt from attachment. *Srinivasan* v. *Padmasini Ammal*[8], takes the view that dearness allowance given to an employee will be part of his salary unlike travelling allowance, house allowance, etc., which are meant for particular occasions or areas and hence in deciding whether an employee's salary is attachable in execution of a decree the quantum of the salary is to be computed inclusive of the dearness allowance where such allowance has not been exempted from attachment. *C. Subramaniam* v. *Pakkiriswami Vandayar*[9], decides that section 63 would apply to enable a superior Court to adjudicate on claims of rival attaching decree-holders only where there have been attachments in execution of decrees of more Courts than one, that where the superior Court has only made an order of attachment before judgment and no execution has been taken in pursuance of the decree made in the suit in the superior Court which made the attachment before judgment it cannot be said that the superior Court has attached the amount in execution, and section 63 cannot apply and would not give power to the superior Court to adjudicate on the claim of the attaching decree-holder in the inferior Court. *Sundaralingam Chettiar* v. *Nagalingam Chettiar*[10], holds that a suit for a declaration that a person in office as trustee of a public trust is not entitled to be so and that

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1. (1957) 2 M.L.J. 414.
2. (1957) 2 M.L.J. 128.
3. (1957) 2 M.L.J. 412.
4. (1957) 2 M.L.J. 28.
5. (1957) 1 M.L.J. 201.
6. (1957) 2 M.L.J. 144.
7. (1957) 2 M.L.J. 400.
8. (1957) 2 M.L.J. 305.
9. (1957) 1 M.L.J. 9.
10. (1957) 2 M.L.J. 634.

the assumption of office by him is invalid does not fall within the scope of section 92, and the removal of a trustee for which the section provides contemplates only *de jure* trustees and does not include persons whose right to hold such office is itself challenged. *Sri Lakshmi and Co.* v. *Swaminatha Iyer*[1], states that the High Court will not under section 100 reverse a decision on a question of fact unless the lower Court's conclusion is perverse, or unreasonable though the High Court may feel considerable suspicion about the evidence and might arrive at a contrary finding if it were dealing with the case as a first appeal. *Venkatammal* v. *Muthukrishna Naidu*[2], points out that where an original petition for leave to sue as pauper has been finally dismissed for non-payment of Court-fee within the time allowed after refusing leave to sue as pauper, the applicant's remedy is only to file a regular appeal against the decree rejecting the plaint and not a revision petition against the order of refusal of leave to sue as pauper. In *Kannan Nambiar* v. *Krishnan Nambiar*[3], it is held that a *bona fide* third party purchaser at a sale held under a Court's decree or order which is subsequently reversed is not affected by the reversal and the remedy of restitution does not lie against him under sections 144 and 151. *Pelloth Ibrahim Haji, In re*[4], holds that the discretion of the Court in regard to addition of parties under Order 1, rule 10 (2) has to be exercised in a reasonable manner so as not to cause inconvenience or embarrassment and where the persons sought to be impleaded have no subsisting right or interest in the subject-matter of the suit and are sought to be impleaded by the defendants only for getting their evidence it would not be proper to make them parties on the mere ground that the defendants would be driven to the necessity of filing a separate suit against those parties. *State of Madras* v. *Subramania Pandara Sannadhi*[5], expresses the view that where a suit is in effect to set aside the finding of the Tribunals under the Estates Abolition Act that the suit lands are an estate there cannot be a final adjudication unless the ryots of the village are also before the Court and the plaintiff should therefore bring them on record under Order 1, rule 8. *Kaliammal* v. *Ramaswami Goundar*[6], lays down that when a minor plaintiff attains majority he must be given an opportunity to make even drastic amendments to the plaint according to what he considers to be the correct and relevant allegations inasmuch as at the moment he attains majority he takes the responsibility for his actions. *Nanjan* v. *Solai*[7], points out that without following the procedure in Order 8, rule 9, if a Court of appeal calls for additional written statements in an appeal without a petition therefor and without knowing even what such statements would contain and asks the other side to file by a certain date a reply to such written statements yet to be filed and posts the appeal for hearing on the assumption of taking the additional written statements into consideration it would be opposed to law. *Subulal Sahib* v. *Perianna Pillai*[8], decides that an application under Order 8-A, rule 1, cannot be dismissed on the ground of absence of privity of contract between the plaintiff and the third party. *Sankara Pandia Thevar* v. *Syed Abdul Rahman Rowther*[9], takes the view that where a person against whom an *ex parte* decree has been passed filed a suit subsequently for a declaration that the decree was not binding on him and the decree was set aside, the question whether the plaintiff in the original suit could apply for a fresh disposal of his suit will depend on the facts and circumstances of each case. *Subramania Chettiar* v. *Ponnuswami Chettiar*[10], states that simiultaneous execution both against the property and person of the judgment-debtor is allowed under Order 21, rule 30, but is subject to the discretion of the Court under Order 21, rule 21, and that according to Order 21, rule 40, if the Court is satisfied on the evidence that the case falls within any of the clauses in the proviso to section 51 the Court has to record its reasons in writing that the judgment-debtor should be committed to prison for one of the reasons set out therein. *Muthukamakshi Chettiar* v. *Shanmuga Nadar*[11], holds that where execution

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1. (1957) 2 M.L.J. 398.
2. (1957) 2 M.L.J. 623.
3. (1957) 1 M.L.J. 59.
4. (1957) 1 M.L.J. 167.
5. (1957) 1 M.L.J. 206.
6. (1957) 2 M.L.J. 164.
7. (1957) 2 M.L.J. 601.
8. (1957) 2 M.L.J. 55.
9. (1957) 2 M.L.J. 101.
10. (1957) 1 M.L.J. 208.
11. (1957) 2 M.L.J. 412.

of a decree obtained against a person in his personal capacity is sought to be executed against his share of the assets in a partnership it is not necessary to file a separate suit for a declaration that the judgment-debtor whose assets in the partnership are sought to be attached is a partner and it is the duty of the executing Court to go into the question and follow the procedure laid down in Order 21, rule 49 (2) in case the finding is that he is a partner. *Govinda Padayachi* v. *Kannammal*[1], points out that Order 21, rule 57, as amended in Madras will come into play only when an execution petition is dismissed for default of the decree-holder and it is only in such a case that the attachment will come to an end whether there is or there is not an order of Court terminating the attachment, so much so, an order on the Execution Petition 'not pressed : attachment to continue' cannot be construed as one dismissing the petition for default of the decree-holder within the meaning of Order 21, rule 57, but is one keeping the application in suspense for the time being to be renewed at a later stage. *Kuppammal* v. *Devendra Iyer*[2], states that where the judgment-debtor and the decree-holder differ regarding the valuation of the property sought to be sold in execution the proper procedure for the Court would be to mention both the figures in the sale proclamation, and the Court cannot fix both the figures as the upset price, nor is it bound to hold an enquiry as regards the value and give such valuation in the proclamation of sale. *Chinnappa Chetty* v. *Gopala Chetty and Bros.*,[3] lays down that the amendment of Order 21, rule 89, in 1936 enables even a purchaser from the judment-debtor to apply under the rule but does not mean that he is the only person who could apply under the rule; hence, a judgment-debtor even if he had sold his property privately to another after the sale of the same in execution is still entitled to apply under Order 21, rule 89, to set aside the execution sale as he will still be a person holding an interest in the property. *Veda Goundar* v. *Arunachalam Chettiar*[4], takes the view that confirmation of sale under Order 21, rule 92, does not require an application by the auction-purchaser; confirmation is a statutory obligation of the Court, and no question of limitation can arise in such a case. *Ethirajulu Naidu* v. *Panikkar*[5], states that under Order 37, rule 4, no restrictions are placed on the Court's power to set aside a decree and grant leave to defend the suit when such an application has been preferred by a party who has entered appearance in pursuance of a notice under rule 2 but as against whom an *ex parte* decree has been passed.

Criminal Law.—In *Chandrasekharan, In re*[6], it is held that to fall within the mischief of section 292, Indian Penal Code, the test of criminality is whether the matter complained of tends to deprave and corrupt those whose minds are open to such immoral influences and except in cases of scientific treatises which can be justified on their own circumstances the motive or intention of the writer or publisher is immaterial if the publication is in fact obscene. *Murugan, In re*[7], points out that where a wife is not merely in adulterous intimacy with another but swears openly in the face of her husband that she would persist in such conduct and abuses her husband for remonstrating, and the husband being thus provoked inflicts injuries on her resulting in her death it may be regarded as a case of grave and sudden provocation within the meaning of section 300; the standards applicable to societies in Western countries where such lapses are looked upon with greater latitude and are deemed to be redressible by the award of damages are not applicable in India, and the gravity of the provocation is a psychological problem depending on the circumstances that prevail at the given situation.

Criminal Procedure Code.—In *Ramachandran, In re*[8], it is pointed out that omission by the prosecution to examine in the Sessions Court eye-witnesses to the occurrence who were examined in the Committing Court and were not treated as hostile is a serious defect in the conduct of the prosecution. *Yesudasan* v. *Guruswamy*[9], declares that the object of section

1. (1957) 1 M.L.J. 201.
2. (1957) 2 M.L.J. 134.
3. (1957) 2 M.L.J. 269.
4. (1957) 2 M.L.J. 388.
5. (1957) 1 M.L.J. 131.
6. (1957) 2 M.L.J. 559.
7. (1957) 2 M.L.J. 9.
8. (1957) 2 M.L.J. 126.
9. (1957) 1 M.L.J. 353.

132, Criminal Procedure Code, is to afford protection to public servants acting in discharge of their duties from being unnecessarily prosecuted without reasonable cause which is ensured by the insistence of prior sanction of the State Government, and such protection will be rendered nugatory if the onus is thrown on the Police Officers to prove in a trial that they acted under the provisions of Chapter IX of the Code before they could seek the protection of prior sanction of the State Government. *Pinto* v. *Fernandez Bai*[1], holds that though a Magistrate's order passed under section 147 is subject to a subsequent decision of a civil Court the mere fact that the rights of parties in regard to the matter in dispute have become crystallised by a subsequent decision of the civil Court setting aside the Magistrate's order does not by itself have the effect of varying or altering also the order for costs under section 148 made by the Magistrate in the earlier criminal proceedings. *Ramachandran*, In re[2], decides that the right of an accused to get copies of statements made by him under section 162 during the course of investigation is a valuable right, that if such copies are not furnished an inference of prejudice to the accused at the trial will arise, that if the original statements are made in Tamil and recorded in that language the statements should be preserved and copies furnished to the accused if he applies for them, and that if such statements are proved to have been destroyed prejudice can be presumed and the accused aquitted. In *Narayana Rao* v. *State of Andhra Pradesh*[3], the Supreme Court holds that while Magistrates have to be circumspect in conducting committal proceedings to see that accused persons are not handicapped in their defence by any omission on the part of the police to supply the necessary copies, it cannot be said that non-compliance with section 173 (4) read with section 207-A (3) has necessarily the result of vitiating those proceedings and the subsequent trial, and the omission is an irregularity which could be cured under section 537 of the Code. *Ramanathan*, In re[4], states that the prosecution must decide before the commencement of the enquiry what witnesses it would examine and mention their names in the charge-sheet filed under section 173 and furnish or cause to be furnished copies of the statements of those witnesses recorded under section 162 and if this is not done the prosecution cannot call any witness it likes subsequently and spring a surprise on the accused. *Public Prosecutor* v. *Parasuram Prabhu*[5], points out that merely because copies of statements made by witnesses to the police were not furnished to the accused under section 173 (4) read with section 251-A before the commencement of the enquiry or trial and only translations of the statements as entered in the case diary were furnished it does not mean that the original statements are not to be read by the accused at a later stage or that the Court has no power to insist on the furnishing of such statements to the accused, and it is the duty of the Court to have them furnished to the accused and opportunity given to cross-examine any witnesses already examined relating to those statements. *Ramaswami Nadar* v. *Viswanathan*[6], lays down that section 200 as amended is mandatory and it is obligatory on the part of the Magistrate to examine not only the complainant but also the witnesses who are present in Court on oath, and the substance of the examination must be reduced to writing and signed by the complainant and the witnesses and also by the Magistrate, and the Magistrate can apply section 203 only if after all these he finds sufficient ground for not proceeding with the case, and the dismissal of a complaint under section 203 without adopting the procedure under section 200 is not valid. *Kadan Kunhikannan*, In re[7], holds that it cannot be said that where an accused has denied the offence when he was first questioned he cannot plead guilty later, that under section 244 if the accused did not in the first instance admit his guilt after the prosecution witnesses have been examined he must be heard, and then if he admits his guilt there is no reason why he should not be convicted especially when he has not cross-examined the prosecution witnesses at all. *K. K. Swami*, In re[8], decides that where in a prosecution on a charge against two accused persons, one of them

1. (1957) 1 M.L.J. 134.
2. (1957) 2 M.L.J. 126.
3. (1957) 2 M.L.J. (S.C.) 139.
4. (1957) 1 M.L.J. 195.
5. (1957) 2 M.L.J. 654.
6. (1957) 1 M.L.J. 157.
7. (1957) 1 M.L.J. 151.
8. (1957) 1 M.L.J. 19.

pleads guilty the Court should proceed under section 271 (2), dispose of the case against him, remove him from the dock, and then empanel a jury in a case triable by jury and try the other accused keeping away from the members of the jury all knowledge of the plea of guilty of the other accused; that when this procedure is not followed and the case proceeds as if the accused pleading guilty is also on trial and he too is examined under section 342 and his statements are taken into consideration against the other accused it amounts to a disregard of section 271 (2) resulting in prejudice to the accused pleading not guilty and the trial is vitiated and cannot be cured. *Ganapathi Muthiriyar* v. *Narayanaswami*[1], points out that the High Court has power to interfere in revision under section 435 even in regard to orders passed by a Magistrate in the course of administration of properties attached under section 146 (1) though the High Court will be extremely reluctant to exercise its revisional power in the absence of compelling reasons. *Soundarajan and Co.* v. *Sankarapandia Nadar*[2], holds that under section 476 the proceedings before the Official Assignee are as a matter of fact in relation to the proceedings in the Court dealing with the insolvency petition, and a complaint may therefore be directed to be laid for an offence of giving false evidence under section 193, Indian Penal Code. *Ramanathan*, In re[3], lays down that witnesses other than those whose names are mentioned in the charge-sheet may, under section 540, Criminal Procedure Code, in the exercise of the Court's judicial discretion, be examined as Court witnesses.

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1. (1957) 2 M.L.J. 62.
2. (1957) 2 M.L.J. 348.
3. (1957) 2 M.L.J. 195.